

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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Civil Action No. _____

BRUCE PURSE,

Plaintiff,

COMPLAINT

-against-

MOUNT VERNON CITY SCHOOL DISTRICT,

Jury trial demanded
by Plaintiff

Defendant.
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Plaintiff, complaining of the Defendant, alleges as follows:

NATURE OF CLAIMS

1. The Plaintiff brings his claims under Title I of the Americans with Disability Act (“ADA”), as amended, 42 U.S.C. § 12101 *et seq.*, which prohibits discrimination in employment against individuals with disabilities. As described below, the Mount Vernon City School District has violated the ADA by failing to reasonably accommodate Plaintiff, a teacher who suffered from restrictive lung disease causing upper and lower respiratory problems and forcing him to remain in a mold filled environment. Without the requested accommodation of removing him from the school which had a long-standing mold problem, Plaintiff was forced to resign from the School District.

PARTIES

2. Plaintiff is an adult male who resides in Hartsdale, New York. Plaintiff was a teacher in the Mount Vernon School District and is an individual with a disability within the meaning of U.S.C. § 12102. He is substantially limited in the major life activity of breathing.

3. Upon information and belief, Defendant Mount Vernon City School District is a municipal corporation in the County of Westchester which may sue and be sued.

4. The events forming the basis of this action took place at Thornton High School in the City of Mount Vernon, New York, in the County of Westchester, State of New York.

5. Plaintiff was an employee of Defendant from 2007 through his resignation.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over this controversy pursuant to 42 U.S.C. § 2000e-5(f) and 28 U.S.C. § 1331 and 1343.

7. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391 inasmuch as this judicial district lies in the State in which the violations occurred. In addition, Defendant maintains offices and conducts business in this district.

8. On or about June 14, 2016, Plaintiff filed a claim with the United States Equal Employment Opportunity Commission (“EEOC”) alleging, inter alia, the

Defendant's violation of the ADA and its failure to accommodate Plaintiff's disability.

9. Plaintiff received a Notice of Right to Sue Letter from the EEOC on or about August 8, 2017.

10. This action has been commenced within ninety (90) days of Plaintiff's receipt of the Notice of Right to Sue Letter from the EEOC.

FACTS

11. Plaintiff worked at Mount Vernon City School District from 2007 until he was forced to resign in 2017. He was a music teacher.

12. In or about 2010, Plaintiff was diagnosed with cancer. Following an operation, Plaintiff took a three month leave to recover from his surgery.

13. After the 2012 school year, the Mount Vernon City School District sought to terminate Plaintiff from his employ. After lengthy negotiations, Plaintiff was granted tenure and was reinstated as if there was no break in his employment.

14. During his tenure with the Defendant, Plaintiff most often was placed in a room that was subject to water leaks from rain. The problem was never remedied while Plaintiff was in the employ of Defendant.

15. As a result of the continuing presence of water in his classroom, Plaintiff would routinely see mold along the baseboards and lower walls and the carpet in

the classroom. Oftentimes, the mold was plainly visible and its presence was known to the Defendant.

16. Unbeknownst to Plaintiff, the presence of mold in the classroom was slowly, but continuously, destroying his respiratory system.

17. In the spring of 2015, Plaintiff's breathing worsened to the point that he was constantly coughing and lacking for breath.

18. Believing that his worsening condition was related to the presence of mold in his work environment, Plaintiff sought the advice of a pulmonary specialist. After testing, it was discovered that Plaintiff had positive antibody titers to mold.

19. Defendant was notified of Plaintiff's health condition and was provided summaries by Plaintiff's medical advisers.

20. As a result of his worsening condition, Plaintiff utilized his sick leave in order to attempt to restore his health.

21. Defendant ignored Plaintiff's worsening health and continually insisted that he return to his mold filled classroom.

22. Faced with the Defendant's denial of the existence of an environmental condition in its building and concerned that a return to the classroom would jeopardize his health, Plaintiff sought more definitive answers from an expert in internal medicine and infectious disease. The expert advised Plaintiff that he had restrictive lung disease which may have been caused by hazardous environmental

microbial exposure and that his continued exposure to mold at his job site was flaring his upper and lower respiratory symptoms.

23. Once it became clear to Plaintiff and his experts of the nature of his illness and its genesis, Plaintiff requested that the mold conditions in his classroom be removed in accordance with accepted standards or that he be placed in another school building away from the mold condition.

24. Defendant was provided with the expert doctor's requirements for Plaintiff to resume working in the building. Defendant ignored his request and did not engage in any discussion with respect to Plaintiff's requests for an accommodation.

25. Plaintiff was left with the choice of ignoring his expert doctor's advice and continue to work or staying home and losing the benefits that he had garnered from his employment.

26. Fearing that his health would be completely compromised, Plaintiff choose to follow his doctor's advice and remain out of the workplace.

27. Once he used up his accumulated sick time, and realizing that Defendant was not going to budge an inch on his request to accommodate, Plaintiff resigned from his position with Defendant in January of 2017.

FIRST CAUSE OF ACTION

Violation of the ADA

28. Plaintiff realleges and incorporates by reference all allegations in all preceding paragraphs.

29. Defendant discriminated against Plaintiff on the basis of his disability in regard to the terms and conditions of his employment, in violation of the ADA, 42 U.S.C. § 12112, and the regulations promulgated thereunder, by failing to provide Plaintiff with a reasonable accommodation after failing to engage in an interactive process to, *inter alia*, identify any limitations resulting from Plaintiff's disability as well as potential reasonable accommodations that could overcome those limitations.

30. As a result, Plaintiff has been damaged.

SECOND CAUSE OF ACTION

Violation of the ADA

31. Plaintiff realleges and incorporates by reference all allegations in all preceding paragraphs.

32. Defendant discriminated against Plaintiff, in violation of the ADA, 42 U.S.C. § 12112, and the regulations promulgated thereunder, by altering the terms and conditions of his employment and forcing him to resign, all on the basis of his disability.

33. As a result, Plaintiff has been damaged.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays for judgment against the Defendant as follows:

A. An award of damages sufficient to compensate him for economic, emotional and psychic injuries, humiliation suffering, insult to dignity, and to provide necessary treatment, in an amount to be determined;

B. An award of punitive damages to punish Defendant for its violation of law and deter similar violations;

C. Attorneys' fees as permitted under the ADA;

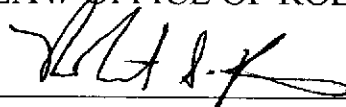
D. Interest at the maximum legal rate;

E. The costs and disbursements of this action; and

F. Such other, further, and alternative relief as this Court may deem just and proper.

Dated: North Babylon, New York
November 6, 2017

LAW OFFICE OF ROBERT S. POWERS

A handwritten signature in black ink, appearing to read 'R. S. Powers', is written over a horizontal line.

Robert S. Powers

Attorney for the Plaintiff
1540 August Road
North Babylon, New York 11703
(631) 940-7121